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2000 MAR -1 P 2:35

March 1, 2000

Mr. Gregory R. Baker
Special Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 4935

Dear Mr. Baker:

This letter is in response to a complaint filed with the Federal Election Commission by Ms. Sandy Aboulafia which alleges that the Dear for Congress Committee, Inc. ("Respondent") violated federal campaign laws.

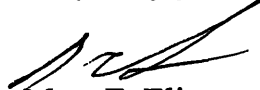
Respondent recently underwent a Commission audit for the 1997-1998 election cycle. In the course of the audit, the Commission examined all of Respondent's books and records from the cycle and reported its findings in an Audit Report.

A review of the complaint filed by Ms. Aboulafia shows that each of her allegations was also raised in the Audit Report. Attached is a copy of Respondent's response to the Audit Report, which details Respondent's position as to each of these allegations.

Because the audit and MUR 4935 concern the same issues, the Commission should dismiss this complaint to avoid unnecessary duplication.

If you have any questions or need any additional information, please do not hesitate to contact the undersigned.

Very truly yours,



Marc E. Elias
Counsel to the Dear for Congress
Committee, Inc.

[29614-0001/DA003672 392]

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November 5, 1999

SENT VIA MESSENGER

Robert J. Costa
Assistant Staff Director
Audit Division
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Interim Report of the Audit Division on Dear for Congress, Inc.

Dear Mr. Costa:

We are writing on behalf of our client, Dear for Congress, Inc. ("the Committee"), in response to the Audit Division's interim report. The Committee wishes to comply with the Audit Division's recommendations. Toward this end, the Committee encloses amended reports covering the period at issue and a number of additional documents, which the Audit Division requested in the Interim Report.

In 1998, Noach Dear was a first-time candidate for Federal office. His supporters had relatively little experience with the Federal Election Campaign Act and its accompanying regulations. The Committee's "lack of any formal aggregation system and failure to maintain . . . a receipts database" (Interim Audit Report at 2) reflected this inexperience.

Also resulting from the Committee's inexperience with the Act and its accompanying regulations were several of the circumstances that gave rise to the Interim Report's findings. A close examination of these circumstances presents a Committee that was aware of the broad contours of the Act and sought to follow them, yet ultimately experienced difficulties because its staff and volunteers were not well-versed in the Act's complexities. Evidence of the Committee's broad efforts toward compliance can be found in—

- Its efforts to limit each contribution attributed to an individual to \$1,000 (see Interim Audit Report at 5, 6);

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- Its efforts to seek reattribution letters (see Interim Audit Report at 6);
- Its establishment of a separate account for funds raised for the general election (see Interim Audit Report at 2) and the fact that some contributors specifically designated their contribution to the general election (see Interim Audit Report at 5);
- Its collection of employer and occupation data (see Interim Audit Report at 8);
- Its filing of late contribution notices for approximately 91 percent of the funds it received during the 20 days preceding the primary, with notices missing for only four contributions (see Interim Audit Report at 10);

One example of how the Committee sought broadly to comply, only to display a lack of sophistication in the rules, can be found on page 6 of the Interim Audit Report. The Audit Staff notes that "[o]ne of the [Committee's] solicitations contained language that 'a couple may contribute \$2,000.' However, the solicitation did not explain that both contributors must either sign the check or provide a signed and dated statement concerning the portion being contributed by each individual."

Another example is found in footnote 3 of the Interim Report, which describes the Audit Staff's exit conference: "The Treasurer stated during the exit conference that he did not consider contributions in the amount of \$2,000 made by checks drawn on joint checking accounts to be excessive . . ." Both of these examples present a Committee which attempts to comply with the broad provisions of the Act, while failing to grasp fully its more detailed provisions. While the Committee's staff and volunteers understood the practical rule that a couple together could contribute up to \$4,000 for a candidate's effort to seek federal office, they did not grasp the series of technical and procedural requirements to which a committee must adhere in order to raise such amounts.

The Committee first began to apprehend the nature of its difficulties after the primary election had concluded and its paid staff had largely departed. The Committee's treasurer discovered that the staff had not kept some committee records, including reattribution letters, in the wake of Mr. Dear's primary election defeat.

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(Interim Audit Report at 6.) Because he was concerned about these recordkeeping issues, and because he sought to adhere to the law and provide only accurate information to the Commission, the Treasurer elected not to file a 1998 Year-End Report. (Interim Audit Report at 3.)

Since the Committee became aware of the errors that resulted from its inexperience, and since this audit process began, the Committee has worked diligently to correct those errors. In the last 10 months, this effectively defunct committee has raised the extraordinary amount of over \$275,000 to refund contributions in accordance with the Interim Report's recommendations. This has required much time and effort on the part of Mr. Dear, a city councilman and local political leader who has placed the need to remedy this situation ahead of other priorities.

The political culture of Mr. Dear's district does much to explain the circumstances that the Interim Report professes to find unusual. New York's Ninth Congressional District is characterized by a dense array of ethnic neighborhoods and high-rises. See Michael Barone and Grant Ujifusa, The Almanac of American Politics 2000, at 1122 (1999). Mr. Dear's political base has historically consisted of Orthodox Jewish citizens, and his campaign was notable for the endorsement he received from Orthodox leaders. Id. In short, campaigns such as Mr. Dear's are required to organize at the neighborhood or even the city block level. In such a political environment and ethnic culture, one could well expect a group of donors to walk together to their neighborhood bank, so that they might attend a campaign fundraising event or contribute to a campaign.

The decisive element cannot be the question of when and where donors choose to contribute, or for whom they might work. (See Interim Audit Report at 11) As the Commission well knows, it is common practice for scores of corporate employees give to the same candidate on the same day in connection with an event held at the corporate headquarters, and few draw the inference that the corporation had paid these individuals to contribute with treasury funds. While the urban, ethnic and grassroots dimensions of the Committee's fundraising efforts may set these efforts apart, they certainly cannot be the basis for suspicion that a violation of the act occurred.

Finally, in its discussion of contributions made by money order, the Audit Staff draws the inference that the funds contributed were other than the contributors' own.

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As a threshold matter, there is nothing inherently inappropriate or suspect about contributions made through money order. Commission regulations place money orders squarely alongside checks as varieties of "written instruments" through which donors may contribute. See, e.g., 11 C.F.R. § 104.8(c) (1999). Moreover, contributions made by money order to publicly funded Presidential campaigns are eligible for the receipt of Federal matching funds. Id. § 9034.2(c). "The Commission has always held contributions submitted for matching to a higher documentation standard, because the matching fund program involves the disbursement of millions of dollars in taxpayer funds." Matching Credit Card and Debit Card Contributions in Presidential Campaigns, 64 Fed. Reg. 32394 (1999).

A review of the "Schedule of Money Orders" attached to the Interim Report demonstrates little cause for concern. Several of the money orders listed by the Audit Staff come only in pairs or even one at a time. (See Interim Audit Report, Attachment 2.) Even when some are shown to have given at the same time, there is no prima facie evidence of contributions in the name of another. Rather, the evidence suggests only concerted political action. Nevertheless, we are including signed statements from a large number of the individuals who contributed via money order attesting to the fact that their contributions came from personal funds.

Finally, the Committee has taken a series of specific measures to comply with the Interim Report's recommendations, as reflected in the exhibits which follow this response:

- The Committee has enclosed a copy of its 1998 Year-End Report. (See Exhibit A.)
- The Committee has enclosed evidence of refunds to 107 contributors totaling \$275,120.00. (See Exhibit B.) This reflects the maximum extent of refunds for which funds were available. The Committee has also reviewed its records to identify other contributors to whom refunds are required. Future reports submitted by the Committee will disclose its pending refunds as debts on Schedule D, and the Committee is continuing its effort to raise funds for additional refunds.

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- The Committee has contacted over 600 donors to collect contributor information requested in the Interim Report. Evidence of these contacts is provided as Exhibit C.
- The Committee has obtained documentation for 13 disbursements totaling \$902,033.68. This documentation is provided as Attachment D.¹
- The Committee has obtained signed and dated statements from 32 individuals, identifying the source of funds used to purchase money orders contributed by them to the campaign. Each statement reflects that the funds used to purchase the money order were the contributor's own. (Attachment E.)
- The Committee is filing amended reports that reflect compliance with the recommendations made in the Interim Report. (Attachment F.)

The Committee is resolved to address the concerns raised in the Interim Report. This response and the attached exhibits are a reflection of its resolve. If you have any questions regarding this matter, please do not hesitate to contact me at the above address and phone number.

Very truly yours,

Marc E. Elias /ccn

Marc E. Elias
Counsel to the Committee

Enclosures

¹ The four disbursements for which the Committee did not obtain documentation were payroll disbursements, for which no invoices exist.